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Written statement* submitted by Liberation, a non-governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[18 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Sri Lanka: The need for an independent, international war crimes inquiry

At this, the 25th Session of the UN Human Rights Council (UNHRC), Liberation urges all member countries to support the initiation of an independent, international war crimes inquiry in Sri Lanka.

Since the end of the country's armed conflict in 2009, the evidence of the perpetration of war crimes and crimes against humanity committed by both sides has continued to mount. Authoritative reports by the 'UN Secretary-General's Panel of Experts on Sri Lanka', the 'Internal Review into UN Actions in Sri Lanka', International Crisis Group and many others make a compelling case for action. "The conduct of the war represented a grave assault on the entire regime of international law." Information on casualty figures was suppressed by the UN, as was the Government's responsibility for many of the lives lost. Over 40,000 civilians died in the final months alone and the Catholic Diocese of Mannar's submission to Sri Lanka's 'Lessons Learnt and Reconciliation Commission' (LLRC) stated that 146,679 people remain unaccounted for.

Added to this, in February 2014, the Public Interest Advocacy Centre's (PIAC's) International Crimes Evidence Project (ICEP) produced a new report on war crimes in Sri Lanka. It provided further information and eye witness accounts, which add credence to the need for an independent, international war crimes inquiry. Drawing on the experience and expertise of a committee of experts, including John Ralston, former Chief of Investigations at the UN's International Criminal Tribunal for the Former Yugoslavia, the findings "presents an evidentiary platform for an international investigation into war crimes and crimes against humanity." The Sri Lankan military "perpetrated the vast majority of alleged crimes" in the final months of the war. Allegations against Government forces include that "human remains from mass burial sites in the conflict zone were exhumed and were covertly destroyed." Senior Sri Lankan government officials and military personnel may be culpable for systematic violations of international law.

The award winning series of films from Channel 4 and the 'No Fire Zone' documentary team have exposed further damning evidence of war crimes. After analysing footage of the killing of prisoners, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, stated that what was shown revealed "crimes of the highest order – definitive war crimes."

As the UN Secretary-General's Panel of Experts said, "accountability for serious violations of international humanitarian and human rights law is not a matter of choice or policy; it is a duty under domestic and international law". Only days after the end of the conflict, President Rajapaksa, in a joint statement with the UN Secretary-General, Ban Ki-Moon, gave a commitment that his Government would move rapidly to address many of the concerns regarding accountability for wartime abuses. This promise has been broken.

When the Panel of Experts produced their report in 2011, they found that their determination of credible allegations revealed "a very different version of the final stages of the war than that maintained [...] by the Government of Sri Lanka." The domestic LLRC process was only initiated following increasing international pressure on the Rajapaksa government and was heavily criticised for its failure to address adequately the alleged violations of the laws of war and for its whitewashing of Government action during the conflict. The independence, impartiality and mandate of the LLRC was "deeply flawed", according to the Panel of Experts, and, as they stated three years ago, "does not and cannot satisfy the joint commitment of the President of Sri Lanka and the Secretary-General to an accountability process."

Nothing that has been done since that time has come close to fulfilling this pledge. The National Action Plan (NAP) to implement the recommendations of the LLRC stated that military, rather than independent, courts of inquiry would look into the handful of cases of alleged army and navy abuses deemed worthy of consideration by the Commission. Military courts cannot provide the impartial investigations necessary, given that the country has a long history of investigations and commissions of inquiry into human rights abuses that have gone nowhere. In any case, as of September 2013, the UN High Commissioner for Human Rights, Ms Navi Pillay, had "received little new information about the Courts of Inquiry appointed by the army and navy to further investigate the allegations of civilian casualties and summary executions raised in the LLRC report and Channel Four documentaries."

Subsequent to the NAP, in January 2013, the Sri Lankan army released a report regarding the implementation of the LLRC recommendations. Their observations reinforced the fact that a credible accountability process will not be forthcoming from within Sri Lanka. The army maintained that there was no deliberate shelling of civilians, and called for the formulation of Sri Lanka's own rules to deal with internal conflict situations, despite its international humanitarian and human rights law obligations.

In light of the above, it is only correct that the international community, including the UNHRC, has raised serious concerns with the accountability and reconciliation processes in Sri Lanka. The two recent resolutions of 2012 and 2013 are testament to this. Also Ms Navi Pillay and her good offices have produced a number of reports and statements that underline the Government of Sri Lanka's unwillingness to engage constructively on these most serious issues.

In March 2013 it was found that "steps taken by the Government to investigate allegations of serious violations of human rights further have been inconclusive, and lack the independence and impartiality required to inspire confidence." As a result, the UN Human Rights Chief reaffirmed her longstanding call for "an independent and credible international investigation into alleged violations of international human rights and humanitarian law." Last September, in an oral update to the UNHRC, Ms Pillay "detected no new or comprehensive effort to independently or credibly investigate the allegations which have been of concern to the Human Rights Council."

Reconciliation and sustainable peace in Sri Lanka is what all members of the Council want to see. However, this can only be built on the foundations of a credible truth and accountability process for the alleged crimes committed. The discovery of a mass grave in Mannar, Northern Sri Lanka, in December 2013, which has already revealed over 50 bodies, emphasises that there are serious questions that need to be answered. This unearthing of a burial site hints at the other atrocities that might be hidden from view on the island, particularly those in the 'No Fire Zones' at the end of the war.

It is also important to state that a genuine mechanism for truth and accountability would challenge the prevailing culture of impunity in the country and could play an important role in reducing the on-going perpetration of human rights abuses. This is imperative given that Sri Lanka, according to Navi Pillay, is heading in an "increasingly authoritarian direction." The "curtailment or denial of personal freedoms and human rights, [..] persistent impunity and the failure of rule of law" has the potential to "sow the seeds of future discord."

In the wake of the release of the UN's damning internal review into its actions in Sri Lanka, the UN Secretary-General, stated that the United Nations had to draw "the appropriate lessons" from Sri Lanka and do "its utmost to earn the confidence of the world's people, especially those caught in conflict who look to the organisation for help." The UNHRC, with its explicit mandate to promote and protect human rights, should be at the forefront of safeguarding universal rights as well as the precepts of international humanitarian and human rights law. In addition, it should seek to support the recommendations of the UN's Panel of Experts and the High Commissioner for Human Rights that an independent, international inquiry is required. The UNHRC has an important opportunity to reinforce the authority of the Council and can send a powerful message to other countries that Governments accused of complicity in war crimes and crimes against humanity would not be able to avoid international reproach for their actions.

Members of the UNHRC must be prepared to implement bold and decisive measures now to guarantee justice for the victims of the conflict, to advance the accountability and reconciliation processes and to help right the wrongs of the UN's inaction during the final stages of the war. Given the manner in which President Rajapaksa's government has operated, his Government should be given no further allowances to undermine the pursuit of the truth. Any last minute attempts to deceive the international community by disingenuously initiating a 'Truth and Reconciliation Commission', as has been reported in the media, should be dismissed as pretence.

At times it has seemed that the hopes for truth, justice, accountability and reconciliation in Sri Lanka might be unattainable. However, as Nelson Mandela said, "it always seems impossible until it is done." With the establishment of an independent, international commission of inquiry in Sri Lanka, UNHRC members have the opportunity to help turn these dreams into reality.